

**SCHAPIRO DECLARATION
EXHIBITS CONTINUED**

Schapiro Exhibit 69

From: Deana Arizala
Sent: Friday, October 27, 2006 4:10 PM
To: Mark M. Ishikawa
Cc: Evelyn Espinosa; Courtney Nieman
Subject: FW: Comedy Central/Spike TV Directives

FYI, please read the message below. Thanks.

Deana Arizala
Client Services Manager. BayTSP, Inc
408.341.2365 (direct)
408.341.2300 (voice)
408.341.2399 (fax)

From: Morales, Cindy [mailto:Cindy.Morales@mtvstaff.com]
Sent: Friday, October 27, 2006 7:17 AM
To: Deana Arizala
Cc: Michelena.hallie@mtvn.com
Subject: Comedy Central/Spike TV Directives

Hi Deana,

I have attached the information below on intentionally posted clips on YouTube that are authorized for Spike TV.

Also, as it relates to the Spike TV and Comedy Centrals titles, we would like to have all clips that are 2 1/2 mins or greater removed off YouTube; **EXCEPT** for **THE DAILY SHOW** and **COLBERT REPORT**. For these two titles, we are requesting that you remove clips that are **5 minutes or longer**.

Approved Spike TV link:

<http://www.youtube.com/spiketv>

Thanks.

Cindy

6/11/2008

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BAYTSP 003733345

Schapiro Exhibit 70

From: Michelena.hallie@mtvn.com
Sent: Monday, October 30, 2006 8:43 PM
To: Deana Arizala
Cc: Morales, Cindy; Evelyn Espinosa
Subject: The Daily Show and The Colbert Report

Importance: High

We would like to change the length of clips of The Daily Show and The Colbert Report that should be taken down to 3 minutes or over rather than the current 5 minutes or over. (All other clip size criteria remain the same.) Please confirm receipt. Thanks, Deana.

Schapiro Exhibit 71

—

From: Evelyn Espinosa
Sent: Saturday, November 04, 2006 7:15 PM
To: Michelena.hallie@mtvn.com
Cc: Mark M. Ishikawa; Deana Arizala
Subject: RE: Video Takedown

Thanks Michelena, we will continue as directed.
best,
Evelyn

From: Michelena.hallie@mtvn.com
Sent: Saturday, November 04, 2006 3:59 AM
To: Mark M. Ishikawa; Evelyn Espinosa; Deana Arizala
Subject: Fw: Video Takedown

Just want to make sure this directive got to you: google as well as youtube takedowns should only be full episodes. Myspace and yahoo are ok to take down as originally directed.

-----Original Message-----
From: Cahan, Adam
To: Hallie, Michelena
Sent: Sat Nov 04 02:55:11 2006
Subject: Fw: Video Takedown

We should still be taking down as much as possible at myspace. It's only google/youtube that has the full episode rule.

-----Original Message-----
From: Deana Arizala <deanaa@baytsp.com>
To: Hallie, Michelena
CC: Courtney Nieman <courtneyni@baytsp.com>; Evelyn Espinosa <evelyn@baytsp.com>; Mark M. Ishikawa <marki@baytsp.com>; Cahan, Adam
Sent: Fri Nov 03 21:16:07 2006
Subject: Video Takedown

Michelena,

Below are the Notice Sent counts for today, November 3, 2006. Have a good weekend.

Best Regards,
Deana Arizala

Summary:

6/11/2008

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BAYTSP 003727465

YouTube: Full Episodes: 149

Myspace: Full Episodes: 23

Yahoo Video: Full Episodes: 0

Google Video: Full Episodes: 115

P2P: Gnutella: 0, eDonkey: 44 (not sent—just for view)

YouTube

Full Episodes

Country Music Television

Count

CMT Music Awards

0

Country Fired Home Videos

0

Crossroads

0

6/11/2008

Foxwothy`s Big Night Out

0

Trick My Truck

0

Comedy Central

South Park

21

The Colbert Report

5

The Daily Show

1

SpikeTV

Carpocalypes

0

King of Vegas

0

Most Xtreme Challenge

0

6/11/2008

Pros Vs Joes

0

Total Nonstop Action

0

Ultimate Fighting Championship

0

Viacom

Andy Milonakis

0

Avatar the Last Airbender

96

Backyardigans

0

Beyond the Break

0

Blue's Room

0

Can't Get A Date

6/11/2008

0

Degrassi

6

Diego

0

Dora The Explorer

0

Drake & Josh

15

Fairly Odd Parents

5

GLAAD Media Awards

0

Greatest TV Quotes and Catch Phrases

0

Hi-Jinks

0

I Pity the Fool

0

6/11/2008

Jack's Big Music Show

0

Laguna Beach

0

Naked Brothers Band

0

Noah's Arc

3

Real World

0

Sit Down Comedy with David Steinberg

0

South of Nowhere

0

Spongebob Squarepants

3

TV Land Myths and Legends

0

TV Land Present the 100

0

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 003727470

VMA Awards

0

Wonder Pets

0

Zoey 101

0

Total

149

Google Video

Full Episodes

6/11/2008

Country Music Television

Count

CMT Music Awards

0

Country Fired Home Videos

0

Crossroads

0

Foxwothy's Big Night Out

0

Trick My Truck

0

Comedy Central

South Park

0

The Colbert Report

0

The Daily Show

6/11/2008

4

SpikeTV

Carpocalypes

0

King of Vegas

0

Most Xtreme Challenge

0

Pros Vs Joes

0

Total Nonstop Action

0

Ultimate Fighting Championship

2

Viacom

Andy Milonakis

0

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 003727473

Avatar the Last Airbender

67

Backyardigans

0

Beyond the Break

0

Blue's Room

0

Can't Get A Date

0

Degrassi

0

Diego

0

Dora The Explorer

0

Drake & Josh

0

Fairly Odd Parents

1

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 003727474

GLAAD Media Awards

0

Greatest TV Quotes and Catch Phrases

0

Hi-Jinks

0

I Pity the Fool

0

Jack's Big Music Show

0

Laguna Beach

11

Naked Brothers Band

0

Noah's Arc

0

Real World

0

Sit Down Comedy with David Steinberg

0

6/11/2008

South of Nowhere

10

Spongebob Squarepants

20

TV Land Myths and Legends

0

TV Land Present the 100

0

VMA Awards

0

Wonder Pets

0

Zoey 101

0

Total

115

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 003727476

Yahoo Video

Clips

Full Episodes

Country Music Television

Count

CMT Music Awards

0

6/11/2008

Country Fired Home Videos

0

Crossroads

0

Foxwothy's Big Night Out

0

Trick My Truck

0

Comedy Central

South Park

0

The Colbert Report

0

The Daily Show

0

SpikeTV

Carpocalypes

0

6/11/2008

King of Vegas

0

Most Xtreme Challenge

0

Pros Vs Joes

0

Total Nonstop Action

0

Ultimate Fighting Championship

0

Viacom

Andy Milonakis

0

Avatar the Last Airbender

0

Backyardigans

0

Beyond the Break

6/11/2008

0

Blue's Room

0

Can't Get A Date

0

Degrassi

0

Diego

0

Dora The Explorer

0

Drake & Josh

0

Fairly Odd Parents

0

GLAAD Media Awards

0

Greatest TV Quotes and Catch Phrases

0

6/11/2008

Hi-Jinks

0

I Pity the Fool

0

Jack's Big Music Show

0

Laguna Beach

0

Naked Brothers Band

0

Noah's Arc

0

Real World

0

Sit Down Comedy with David Steinberg

0

South of Nowhere

0

Spongebob Squarepants

0

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 003727481

TV Land Myths and Legends
0

TV Land Present the 100
0

VMA Awards
0

Wonder Pets
0

Zoey 101
0

Total
0

MySpace

Full Episodes

6/11/2008

Country Music Television

Count

CMT Music Awards

0

Country Fired Home Videos

0

Crossroads

0

Foxwothy's Big Night Out

0

Trick My Truck

0

Comedy Central

South Park

0

6/11/2008

The Colbert Report

0

The Daily Show

0

SpikeTV

Carpocalypes

0

King of Vegas

0

Most Xtreme Challenge

0

Pros Vs Joes

0

Total Nonstop Action

0

Ultimate Fighting Championship

0

Viacom

6/11/2008

Andy Milonakis

0

Avatar the Last Airbender

0

Backyardigans

0

Beyond the Break

0

Blue's Room

0

Can't Get A Date

0

Degrassi

0

Diego

0

Dora The Explorer

0

Drake & Josh

0

6/11/2008

Fairly Odd Parents

2

GLAAD Media Awards

0

Greatest TV Quotes and Catch Phrases

0

Hi-Jinks

0

I Pity the Fool

0

Jack's Big Music Show

0

Laguna Beach

0

Naked Brothers Band

0

Noah's Arc

0

Real World

6/11/2008

0

Sit Down Comedy with David Steinberg

0

South of Nowhere

10

Spongebob Squarepants

11

TV Land Myths and Legends

0

TV Land Present the 100

0

VMA Awards

0

Wonder Pets

0

Zoey 101

0

Total

23

6/11/2008

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BAYTSP 003727487

P2P (Not sent)

Country Music Television

Gnutella

eDonkey

CMT Music Awards

0

0

Country Fired Home Videos

0

6/11/2008

0

Crossroads

0

0

Foxwothy's Big Night Out

0

0

Trick My Truck

0

0

Comedy Central

South Park

0

0

The Colbert Report

0

0

6/11/2008

The Daily Show

0

0

SpikeTV

Carpocalypes

0

0

King of Vegas

0

0

Most Xtreme Challenge

0

0

Pros Vs Joes

0

0

6/11/2008

Total Nonstop Action

0

0

Ultimate Fighting Championship

0

0

Viacom

Andy Milonakis

0

0

Avatar the Last Airbender

0

0

Backyardigans

0

2

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 003727491

Beyond the Break

0

0

Blue's Room

0

0

Can't Get A Date

0

0

Degrassi

0

0

Diego

0

0

Dora The Explorer

0

0

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 003727492

Drake & Josh

0

0

Fairly Odd Parents

0

0

GLAAD Media Awards

0

0

Greatest TV Quotes and Catch Phrases

0

0

Hi-Jinks

0

0

I Pity the Fool

0

0

Jack's Big Music Show

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BAYTSP 003727493

0

0

Laguna Beach

0

0

Naked Brothers Band

0

0

Noah's Arc

0

0

Real World

0

0

Sit Down Comedy with David Steinberg

0

0

South of Nowhere

0

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 003727494

0

Spongebob Squarepants

0

0

Hogan Knows Best

0

41

Breaking Bonaduce

0

1

VMA Awards

0

0

Wonder Pets

0

0

Zoey 101

0

0

6/11/2008

Total

0

44

Deana Arizala
Client Services Manager, BayTSP, Inc
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6/11/2008

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BAYTSP 003727496

Schapiro Exhibit 72

From: Evelyn Espinosa
Sent: Tuesday, November 14, 2006 5:12 PM
To: Deana Arizala
Cc: Courtney Nieman; Sarah Cruz
Subject: FW: MTVN Weekly Report October 30, 2006 - November 5, 2006

pls confirm with michelena

From: Michelena.hallie@mtvn.com
Sent: Tuesday, November 14, 2006 7:05 AM
To: Evelyn Espinosa
Cc: Mark M. Ishikawa; Courtney Nieman; Cahan, Adam; Deana Arizala; Morales, Cindy; Sarah Cruz
Subject: RE: MTVN Weekly Report October 30, 2006 - November 5, 2006

Are we up and running on taking down clips off youtube now?

From: Evelyn Espinosa [mailto:evelyn@baytsp.com]
Sent: Thursday, November 09, 2006 6:00 PM
To: Hallie, Michelena
Cc: Mark M. Ishikawa; Courtney Nieman; Cahan, Adam; Deana Arizala; Morales, Cindy; Sarah Cruz
Subject: RE: MTVN Weekly Report October 30, 2006 - November 5, 2006
Importance: High

Michelena,

This serves to confirm your new directive below.
Please be advised that it will take a day or two to re-sort through the material for the clip length change.
Please let me know if you have any questions.
Best regards,
Evelyn

From: Michelena.hallie@mtvn.com
Sent: Thursday, November 09, 2006 2:05 PM
To: Sarah Cruz
Cc: Mark M. Ishikawa; Evelyn Espinosa; Courtney Nieman; Cahan, Adam; Deana Arizala; Morales, Cindy
Subject: RE: MTVN Weekly Report October 30, 2006 - November 5, 2006
Importance: High

Sarah, we would like to implement effective immediately our original policy to take down all clips that have been identified as exclusively our material under the following criteria:


- Daily Show and Colbert Report: 3 minutes or longer
- All other shows on our list: 2 1/2 minutes or longer

If you identify any clips of the above lengths that include any material other than our own programs, do not remove them until they have been submitted to me and I have approved removal.

Please confirm receipt of this new directive.

Michelena Hallie
Senior Vice President
Deputy General Counsel, Intellectual Property
MTV Networks, Business and Legal Affairs

6/23/2008

1515 Broadway, 34th Floor
New York, New York 10036


From: Deana Arizala [mailto:deanaa@baytsp.com]
Sent: Wednesday, November 08, 2006 8:11 PM
To: Hallie, Michelena; Morales, Cindy
Cc: Mark M. Ishikawa; Evelyn Espinosa; Courtney Nieman; Cahan, Adam; Sarah Cruz
Subject: MTVN Weekly Report October 30, 2006 - November 5, 2006
Importance: High

Michelena,

Enclosed is the Weekly Report from October 30, 2006 – November 5, 2006. I had emailed this report in advance because I will be out of the office tomorrow till November 13, 2006. Please direct any update or request to Sarah. Her email is sarahc@baytsp.com. If it is urgent, please contact Evelyn or Mark.

Thank you.

Best Regards,
Deana Arizala

Deana Arizala
Client Services Manager. BayTSP, Inc
408.341.2365 (direct)
408.341.2300 (voice)
408.341.2399 (fax)

6/23/2008

HIGHLY CONFIDENTIAL

BAYTSP 003719299

Schapiro Exhibit 73

Subject: FW: New Protocol on Daily Show and Colbert
From: "Hallie, Michelena" <EX:/O=VIACOM/OU=CORPUSA/CN=RECIPIENTS/CN=HALLIEM>
To: Herzog, Doug; Cahan, Adam
Cc: Date: Fri, 17 Nov 2006 17:26:17 +0000

Fyi.

-----Original Message-----

From: Deana Arizala [mailto:deanaa@baytsp.com]
Sent: Friday, November 17, 2006 12:22 PM
To: Hallie, Michelena
Cc: Mark M. Ishikawa; Evelyn Espinosa; Morales, Cindy; Courtney Nieman
Subject: RE: New Protocol on Daily Show and Colbert
Importance: High

Michelena,

We will go ahead and proceed with the changes and take down 2:30 or longer clips for The Daily Show and The Colbert Report starting today.

Best Regards,
Deana Arizala

Deana Arizala
Client Services Manager. BayTSP, Inc
408.341.2365 (direct)
408.341.2300 (voice)
408.341.2399 (fax)

-----Original Message-----

From: Michelena.hallie@mtvn.com
Sent: Friday, November 17, 2006 9:15 AM
To: Deana Arizala; Courtney Nieman
Cc: Mark M. Ishikawa; Evelyn Espinosa; Morales, Cindy
Subject: New Protocol on Daily Show and Colbert

I can now authorize take down of all Daily Show and Colbert that are 2:30 or longer. Please let me know when that will begin happening.

Schapiro Exhibit 74

—

From: Deana Arizala
Sent: Friday, November 17, 2006 10:48 PM
To: Michelena.hallie@mtvn.com; Courtney Nieman
Cc: Mark M. Ishikawa; Evelyn Espinosa; Morales, Cindy
Subject: RE: 24 hour advance notice on rule changes.

Michelena,

I just want to inform you that yes; Cindy and I spoke and clarified the misunderstanding. Furthermore, we will go ahead and add the list below on our system. We will NOT take down any of the new shows listed below till instructed.

Best Regards,
Deana Arizala

Deana Arizala
Client Services Manager. BayTSP, Inc
408.341.2365 (direct)
408.341.2300 (voice)
408.341.2399 (fax)

From: Michelena.hallie@mtvn.com
Sent: Friday, November 17, 2006 2:38 PM
To: Courtney Nieman; Deana Arizala
Cc: Mark M. Ishikawa; Evelyn Espinosa; Morales, Cindy
Subject: RE: 24 hour advance notice on rule changes.

Ok. Good to go. Please make the changes noted. I understand we can expect a report on the amount and sizes of the clips on the new shows within a week. After getting that material we will instruct on the size of clips to take down. So until that time, **no clips from this new list should be taken down**. In contrast, clips from the original list that remain on the list (ie excluding those in yellow that are being deleted) should be taken down as previously noted. **In other words the original list as modified should have take downs of 2 1/2 minutes for all but Daily and Colbert which should be taken down at 3 minutes.**

I understand Deana and Cindy clarified the misunderstanding and we are taking down ALL shows but Colbert and Daily at 2 1/2 minutes. Please let me know if that is incorrect.

From: Hallie, Michelena
Sent: Friday, November 17, 2006 4:07 PM
To: 'Courtney Nieman'
Cc: 'Mark M. Ishikawa'; 'Evelyn Espinosa'; 'Deana Arizala'
Subject: RE: 24 hour advance notice on rule changes.

No final word but once I do get the sign off -- it should be Jimmy Neutron not Jimmy Neutro

6/11/2008

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BAYTSP 003721230

From: Hallie, Michelena
Sent: Friday, November 17, 2006 2:58 PM
To: 'Courtney Nieman'
Cc: Mark M. Ishikawa; Evelyn Espinosa; Deana Arizala
Subject: RE: 24 hour advance notice on rule changes.

I think that makes sense. Next time I tell you to change course on a dime, slap me.

And subject to your new 24 hour rule, the direction now is to stay the course with 3 minutes on Colbert and Daily and 2 1/2 on all else. But we will also want you to substitute out the programs in yellow in the first grid below for the programs listed in the lower grid.

I'll give you final authorization by COB today.

Btw, I'll be in London next Monday and flying back tuesday, but accessible by email when not in flight.

The **13** (of 41) highlighted below should be dropped from our sweeps:

Andy Milonakis - Clips	332
Avatar the Last Airbender - Clips	1451
Backyardigans - Clips	69
Beyond the Break - Clips	11
Breaking Bonaduce - Clips	4
Can't Get A Date - Clips	5
CMT Music Awards - Clips	7
Country Fried Home Videos - Clips	4
Crossroads - Clips	20
Degrassi - Clips	755
Diego - Clips	2
Dora The Explorer - Clips	12
Drake & Josh - Clips	207
Fairly Odd Parents - Clips	71
Flavor of Love	142
Foxworthy's Big Night Out - Clips	5
GLAAD Media Awards - Clips	16
Hip Hop Honors Award - Clips	6
Hogan Knows Best - Clips	9
I Pity The Fool - Clips	15
Jack's Big Music Show - Clips	7
Laguna Beach - Clips	63
Most Xtreme Challenge - Clips	14
Naked Brothers Band - Clips	49
Noah's Arc - Clips	29

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Real World - Clips	10
Sit Down Comedy with David Steinberg - Clips	0
South of Nowhere - Clips	503
South Park - Clips	4009
South Park - Full Episode	106
Spongebob Squarepants - Clips	324
The Colbert Report - Clips	740
The Daily Show - Clips	1642
The Wendy Williams Experience - Clips	3
Totally Awesome - Clips	35
TotalNonstop Action! - Clips	9
Trick My Truck - Clips	2
Ultimate Fighting Championship - Clips	30
VMA Awards - Clips	221
Wonder Pets - Clips	12
Zoey 101 - Clips	65
Grand Total	11016

In addition, there are several shows to add

Chappelle Show (CC)

Comedy Central Presents (CC)

Drawn Together (CC)

Mind of Mencia (CC)

Reno 911! (CC)

Stella (CC)

Upright Citizen Brigade (CC)

Punk'd (MTV)

Pimp My Ride (MTV)

Beavis & Butthead (MTV)

Celebrity Death Match (MTV)

Best Week Ever (VIII)

Mr. Meaty (Nick)

Jimmy Neutron (Nick)

Unfabulous (Nick)

Amanda Show (Nick)

6/11/2008


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BAYTSP 003721232

Rugrats (Nick)

Invader Zim (Nick)

Ren and Stimpy (Nick)

Michelena Hallie
Senior Vice President
Deputy General Counsel, Intellectual Property
MTV Networks, Business and Legal Affairs
1515 Broadway, 34th Floor
New York, New York 10036


From: Courtney Nieman [mailto:courtneyni@baytsp.com]
Sent: Friday, November 17, 2006 2:19 PM
To: Hallie, Michelena
Cc: Mark M. Ishikawa; Evelyn Espinosa; Deana Arizala; Courtney Nieman
Subject: 24 hour advance notice on rule changes.

Michelena,

I would like to make a suggestion: any rule changes should be submitted 24 hours in advance of implementation. To allow for the change of mind that might take place. (Emergency changes, stop orders, and immediate take down orders, will be exempted from the 24 hour notice.)

New assets (titles) can be added immediately. We would not begin enforcement activity on a new asset for at least 24 hours, due to the time it takes to gather infringements. So, this suggestion would not affect a new asset.

What do you think?

Courtney

From: Michelena.hallie@mtvn.com
Sent: Friday, November 17, 2006 10:41 AM
To: Deana Arizala; Courtney Nieman
Cc: Cahan, Adam
Subject: Daily and Colbert

If you haven't already started please hold off on takedowns under new criteria for Daily and Colbert. I'll let you know how to proceed shortly.

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 003721233

Schapiro Exhibit 75

—

From: Mark M. Ishikawa
Sent: Saturday, October 07, 2006 6:50 AM
To: Hallie, Michelena
Cc: paramount_cc
Subject: Assets remaining on YouTube

Michelena,

We have completed our initial scans and removal of the selected assets from YouTube as per your instructions. We will continue to scan and remove assets as they are uploaded.

I did some scanning of the remaining assets which did not meet the “appears like entire episodes” model and quite a bit remains.

[REDACTED]
[REDACTED] We are leaving a majority of the content on YouTube. We have other clients that will send takedown notices for clips as short as 4 seconds as long as its identifiable as the content.

Let me know if you want to discuss this.

Thx

Mark

6/11/2008

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BAYTSP 003723588

Schapiro Exhibit 76

From: Michelena.hallie@mtvn.com
Sent: Thursday, November 16, 2006 2:57 AM
To: Courtney Nieman
Cc: Evelyn Espinosa; Deana Arizala; Mark M. Ishikawa; Sarah Cruz
Subject: Re: Time Breakdown of Clips from yesterday.

I would like a call between 2:30 and 5:30 NY time tomorrow. It is essential that I have a thorough understanding of what is going on. Please let me know what time works for you.

-----Original Message-----

From: Hallie, Michelena
To: 'courtney@baytsp.com' <courtney@baytsp.com>
CC: 'evelyn@baytsp.com' <evelyn@baytsp.com>; 'deanaa@baytsp.com' <deanaa@baytsp.com>; 'marki@baytsp.com' <marki@baytsp.com>; 'sarahc@baytsp.com' <sarahc@baytsp.com>
Sent: Wed Nov 15 21:32:25 2006
Subject: Re: Time Breakdown of Clips from yesterday.

Sorry. I should have hit Reply All. (I initially sent this only to Courtney)

First, what about Daily Show and Colbert that were longer than 2 1/2 minutes and shorter than 3 minutes? And does this mean there were only 36 clips passed over on youtube? I can't believe there were only 44 of our clips total on youtube since we didn't remove any clips last week. (My recollection is we took only 8 down under our criteria.). Is that right?

-----Original Message-----

From: Courtney Nieman <courtney@baytsp.com>
To: Hallie, Michelena
CC: Evelyn Espinosa <evelyn@baytsp.com>; Deana Arizala <deanaa@baytsp.com>; Mark M. Ishikawa <marki@baytsp.com>; Courtney Nieman <courtney@baytsp.com>; Sarah Cruz <sarahc@baytsp.com>
Sent: Wed Nov 15 21:20:53 2006
Subject: Time Breakdown of Clips from yesterday.

Michelena,

Here is the break down of the "Passed On" clips from yesterday's report

Time Break Down of Video Clips

Length *	YouTube	MySpace	Google	Total	%
0-60	277	14	41	332	47%
61-90	150	12	33	195	28%
91-120	61	6	17	84	12%
121-150	52	4	6	62	9%
151-180	10	1	18	29	4%
	550		37	115	702

*Clip length is reported in seconds.

Call me if you have any questions.

Courtney Nieman
Manager Client Services
BayTSP, Inc.
408-341-2314
AIM: BayTSPCanne
Have you checked out BayTSP's Piracy news web log? <http://www.baytsp.com/weblog> <<http://www.baytsp.com/weblog>>

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6/11/2008

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BAYTSP 001125759

Schapiro Exhibit 77

From: "Ganeless, Michele" <Michele.Ganeless@comedycentral.com>
Date: Wed, 1 Nov 2006 14:53:45 -0500
To: "Witt, Jason" <Jason.Witt@mtvstaff.com>
Subject: RE: Really?

I'm not aware of any new announcements....i think there was an attempt to clarify that there are still cc clips on youtube....that in fact, they were never asked to remove them all. This was circulating yesterday as well in various reports.

It's all so f@&*ing overblown. I'm so over it.

-----Original Message-----

From: Witt, Jason
Sent: Wednesday, November 01, 2006 2:14 PM
To: Ganeless, Michele
Subject: Really?

Seems like an awkward announcement.

Viacom keeps clips on YouTube

Viacom <<http://r.smartbrief.com/resp/eLconZgYBXzodIfCfGcZsNmr>> said it will allow YouTube Inc. <<http://r.smartbrief.com/resp/eLconZgYBXzodUfCfGcZxGUS>> to continue running clips from Comedy Central's "The Daily Show with Jon Stewart" and "The Colbert Report" -- only days after it requested that some of its programming be removed. The change of heart suggests that a deal between the two companies is near.

Sent from my BlackBerry Wireless Handheld

Schapiro Exhibit 78

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE FOOTBALL ASSOCIATION PREMIER)	
LEAGUE LIMITED, BOURNE CO., et al.,)	
on behalf of themselves and all)	
others similarly situated,)	
)	
Plaintiffs,)	
vs.)	Case No.
)	07-CV-3582
)	
YOUTUBE, INC., YOUTUBE, LLC, and)	
GOOGLE, INC.,)	
)	
Defendants.)	
)	

VIDEOTAPED DEPOSITION OF
VICTORIA TRAUBE
NEW YORK, NEW YORK
THURSDAY, OCTOBER 8, 2009

BY: REBECCA SCHAUMLOFFEL
JOB NO. 17869

A P P E A R A N C E S:

FOR THE PLAINTIFFS:

LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP

BY: DAVID S. STELLINGS, ESQ.

ANNIKA MARTIN, ESQ.

250 Hudson Street, 8th floor
New York, New York 10013-1413
Dstellings@lchb.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE,
LLC and GOOGLE, INC.:

MAYER BROWN, LLP

By: GREGORY A. FRANTZ, ESQ.

FIDELIS I. AGBAPURUONWU, ESQ.

1675 Broadway

New York, New York 10019

(212) 506-2146

Gfrantz@mayerbrown.com

Fagbapuruonwu@mayerbrown.com

ALSO PRESENT:

Katherine Wagner

Salleen Browne, Videographer

VICTORIA TRAUBE

EMI, Cafe Concerto and Nichion; can you think of occasions in which they have requested the right to authorize a work being posted on the Internet?

A. None of them, as far as I can recall, has made such a request.

Q. As you sit here today, can you definitively state that you've not received any such requests?

A. I haven't. I can't definitively state that the publishing company never received such a request. But I think I would have heard of it.

Q. When you say "the publishing company" --

A. I am referring to our division, Williamson Music.

Q. Going back to the Young Vic reference that you made before, why did R&H, in this case, allow the work to be posted on YouTube?

A. Because this particular customer feels that it is important for their promotion of their production.

VICTORIA TRAUBE

1
2 Q. And did R&H object to this
3 particular work being posted or this
4 particular use being posted on the
5 13:44:02 Internet?

6 A. To the contrary. They asked
7 for our permission and we agreed.

8 Q. Right. Ultimately you
9 agreed, but was there a period of
10 13:44:13 discussions in which R&H resisted the
11 idea first?

12 MR. STELLINGS: Objection.

13 A. No, not to the customer.

14 Q. So in other words, R&H
15 13:44:25 immediately agreed to the idea of
16 authorizing this particular use to be
17 on YouTube?

18 MR. STELLINGS: Objection.

19 Vague.

20 13:44:38 A. Any previous discussions
21 among me and management were related to
22 this litigation and, therefore,
23 privileged.

24 Q. Is this the only
25 13:44:55 circumstance that you are aware of in

VICTORIA TRAUBE

which R&H has allowed a particular use
to be on YouTube?

A. No.

13:45:11 Q. Can you describe any
additional instances?

A. There is a show called White
Christmas, Irving Berlin's White
Christmas. It is produced under a
13:45:36 license from the Rodgers & Hammerstein
Organization on behalf of our client,
Irving Berlin. It is a first-class
contract prepared a number of years
ago. It may go back as far as 2003,
13:45:59 although I am not sure.

And the website for White
Christmas, The Musical, has a link, I
think that's what it is called, I think
a link to YouTube where they show clips
13:46:24 from the show.

The producers licensed with
us allows advertising and promotional
use on the Internet and it was a
license that was entered into some time
13:46:40 ago. So this was a use that we

VICTORIA TRAUBE

considered authorized by a preexisting contract.

Q. And you described it as a first-class license?

A. Yes. First class is -- it is a form of production. It is sort of the most prestigious professional production, plays only in major cities. It played on Broadway last season, which I believe was the first time that they put up these links. So you can call it a Broadway production, if that helps.

Q. Did R&H ever object to this particular use of its work on YouTube?

A. We did not because we felt it was authorized by the contract and that it was something that we were willing to permit.

Q. If it wasn't authorized by a contract, would R&H still be willing to permit it?

A. No.

Q. Are there similar contracts

VICTORIA TRAUBE

that R&H has issued in the past that
permit works to be posted on YouTube?

A. I don't know about any
13:48:07 language specifically allowing use on
YouTube. Our first class contracts
generally contain a clause of the kind
that I just described permitting
Internet use for promotional purposes;
13:48:20 at least the first class contracts that
we have entered into recently. I
believe it is formulated as radio,
television and Internet media uses.

Q. Are you aware of whether R&H
13:48:35 has issued these types of first-class
licenses for any of the works in suit?

A. These licenses would not
have been for the works in suit. We
have had various first-class
13:48:59 productions of The Sound of Music which
contains some of the works in suit.
But I honestly don't know if the same
language is in every first-class
contract.

13:49:22 Q. Do you have a sense of what

VICTORIA TRAUBE

percentage of the licenses that your company authorizes or issues are these first-class licenses?

13:49:31 MR. STELLINGS: I am going to object. And we are, again, getting into this licensing area that Miss Traube is not here to testify on behalf of Rodgers & Hammerstein about.

MR. FRANTZ: And again, the understanding was we weren't going to go at specific clauses, but this is specifically relevant to a number of subjects in Exhibit 1.

13:49:46 MR. STELLINGS: You have been asking some fairly specific licensing related questions about specific licenses.

13:49:56 MR. FRANTZ: Actually, I am asking generally what are the general practices. There are no documents in front of the witness.

So in any event, is the instruction not to answer or the

13:50:03

VICTORIA TRAUBE

A. That's what happened in the
Annie Get Your Gun case.

Q. Other than that
14:11:56 circumstance, have there been any
others?

A. I can't think of any.

Q. Let's do the next exhibit,
please.

(Whereupon, the
aforementioned Notices of
Infringement, RH00153606-'153613,
were marked as Defendant's Exhibit
4 for identification as of this
14:12:45 date by the Reporter.)

Q. When you are ready, look up
and I will start questioning.

Can you identify these
documents?

14:13:01 A. Yes. These were Notices of
Infringement prepared for me, and
bearing my signature, relating to use
on YouTube, a number of musical
composition from an amateur production
14:13:21 of Annie Get Your Gun presented by the

VICTORIA TRAUBE

New Horizon Community Theater, of which
I have spoken previously in this
deposition.

14:13:32 Q. Who were these documents
prepared by?

A. By Robin Walton, who is a
paralegal that works for me.

Q. Did YouTube respond promptly
14:13:45 to the Takedown Notices?

MR. STELLINGS: Objection.

The document speaks for itself.

But you can answer.

A. I see here that we have got
14:13:54 a response on April 30th. Sorry,
April 29th, to a Notice filed by fax on
April 28th.

Q. Has R&H ever had a problem
with YouTube not responding
14:14:12 expeditiously to Takedown Notices?

MR. STELLINGS: Objection.

A. No.

Q. Who decided to send these
Takedown Notices?

14:14:25 A. These in particular?

VICTORIA TRAUBE

Q. Yes.

A. Me.

Q. Do you know how these

14:14:29 allegedly infringing URLs were
identified?

A. Yes. This is in my
testimony from earlier, but it wasn't
in the context of these specific
14:14:40 Notices. I think. I think I talked
about -- well, okay. We got a tip from
somebody on our website, you know, in
the general box that there were these
compositions, a number of compositions,
14:15:04 from Annie Get Your Gun posted on the
Internet.

Okay. I am misremembering.
I don't know how the initial uses were
brought to our attention. What I do
14:15:21 know is that a few days later we got a
tip in our mailbox that the
compositions were back up on -- the
same compositions, which had been taken
down, were up on somebody else's
14:15:39 website and we sent the second Letter

VICTORIA TRAUBE

probably tell from looking at these clips where they emanated from.

So there are two reasons why there would be no need to consult with EMI, in my opinion.

Q. I am just going to go back to the testimony for one second. So what you just said was, in your opinion, there would be no need to consult with EMI.

My question is whether you know, definitively, steps that your counsel has taken as far as contacting sub-publishers with respect to potential authorization for all of the clips in suit?

A. And the answer is, I don't know.

Q. Earlier you mentioned that although a sub-agent itself does not have a right to authorize a particular clip to be on YouTube, it is possible that a sub-agent would ask for that right on behalf of a particular

VICTORIA TRAUBE

licensee; is that correct?

A. Yes.

Q. And with respect to all of

15:05:50 the clips in suit, has your counsel, to

your knowledge, gone through the

process of contacting all of the

sub-agents, or potential licensees,

that may have asked for the right to

15:06:03 post a particular work --

A. There's --

Q. -- on YouTube?

MR. STELLINGS: Object to

the form of the question.

15:06:09 You can answer.

A. There would be no reason to

do that. The only person they would

have to talk to is me because any

requests from a sub-agent would have

15:06:21 come from me, and I would have told my

counsel if I had agreed to any use on

YouTube.

Q. But you, yourself, have not

gone through all of the clips in suit,

15:06:33 have you?

VICTORIA TRAUBE

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2 A. No, but I have told my
3 counsel about the few occasions that I
4 have mentioned here where I agreed to
5 15:06:44 allow promotional use on YouTube. They
6 are pretty -- there are very few and
7 pretty bright in my mind.

8 Q. And you mentioned two today.
9 Are there any other instances besides
10 15:06:56 the two you have testified to today?

11 A. The only other one that
12 comes to mind, now that I think about
13 it, is the -- we talked about the Dutch
14 television program. There was a clip
15 15:07:36 using one of The Sound of Music songs
16 related to that program. And again --
17 let's see what I can say without
18 getting into privileged material. We
19 licensed that clip after we discovered
20 15:08:00 it.

21 Q. And you licensed the right
22 for that clip to appear on YouTube?

23 A. Yes.

24 Q. And do you recall which
25 15:08:13 particular Sound of Music song we are

VICTORIA TRAUBE

1 talking about?

2 A. Earlier I said I thought it
3 was Do-Re-Mi, but I am just not sure.
4

5 15:08:23 Q. You may have stated this,
6 but it is not crisp in my mind right
7 now. In that case, the particular
8 entity that used the clip was a Dutch
9 television show?

10 15:08:40 A. Yes.

11 Q. And do you remember the name
12 of the Dutch television show?

13 A. No. It was -- but it was
14 something about Maria. It was a Star
15 15:08:55 Search program to cast the role of
16 Maria.

17 Q. Did the Dutch television
18 show reach out to you in particular to
19 get a license to have the work posted
20 15:09:15 on YouTube?

21 A. No, that's not how it
22 happened.

23 Q. Can you explain how it
24 happened?

25 15:09:23 A. Yes. The clip came to our

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VICTORIA TRAUBE

attention and we decided that it should
be licensed as opposed to taken down.

15:09:43 Q. How did the clip come to
your attention?

A. People sent it to us.

Q. Was this a clip on YouTube?

A. It was on YouTube. It may
have been other places as well.

15:09:53 Q. Why did the company
determine that it should be licensed as
opposed to taken down?

A. Because it got a fair amount
of public attention. And also, we were
15:10:13 in the process of being bought by a
Dutch company and it just seemed to us,
from a public relations standpoint,
that we were better off licensing it
than sending a Takedown Notice.

15:10:27 Q. When was this license
issued?

A. Some time in the last year.

MR. FRANTZ: We will request
a copy of that license as well as
15:10:39 any other license allowing that

VICTORIA TRAUBE

clip to be posted on YouTube.

Q. Do you recall the terms
under which that particular license was
15:10:53 granted?

A. I do not.

Q. What do you mean that it
would be beneficial to the company,
from a public relations standpoint, to
15:11:05 have the work on YouTube?

MR. STELLINGS: Object to
the form of the question.

A. Is that what I said? I
don't think I said that. I think that
15:11:10 I said it would not be good from a
public relations standpoint. And that
it wouldn't be a good thing, from a
public relations standpoint, to have
taken down a clip that had already
15:11:22 gotten a fair amount of attention. It
was just -- it was our business sense.

It was a business decision
that it was -- since it is our position
that we need to control how our
15:11:43 material is used, it was our choice to

VICTORIA TRAUBE

active consideration or promotion on
YouTube, I don't know.

16:01:27 MR. FRANTZ: So as part of
the continued deposition, we are
going to ask that a witness be
provided with knowledge.

16:01:41 MR. STELLINGS: With
knowledge about this specific
document you mean, right?

MR. FRANTZ: With knowledge
of the subject as well as this
particular document. The subject
being 5.

16:01:47 MR. STELLINGS: Miss Traube
spent a couple of hours testifying
about 5 so far today. Maybe an
hour. But we will try to get more
information about the specific
16:01:56 document.

MR. FRANTZ: As well as the
subject, as the testimony is clear
that Miss Traube did not prepare
on Topic Number 5.

16:02:13 BY MR. FRANTZ:

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VICTORIA TRAUBE

Q. Have you ever used YouTube
at work?

A. I have gone to the YouTube
16:02:27 website at work for personal reasons.

Q. When you say "personal
reasons," what do you mean by that?

A. Mostly to see cat videos.

Q. Are there other reasons
16:02:40 besides seeing cat videos?

MR. STELLINGS: Any dog
videos?

THE WITNESS: I don't care
for dogs, but there was one with
16:02:50 lions.

Q. Besides seeing animals --

A. Animals are really my major
interest.

Q. Other than the animals, have
16:03:03 you ever visited YouTube for any other
reason at work?

A. People may have sent me
YouTube clips.

Q. Do you recall viewing any
16:03:20 clips on YouTube?

VICTORIA TRAUBE

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16:03:26 A. Well, you know, I am just
not sure whether it was YouTube, but
remember that clip of Susan Boyle when
she was discovered in the UK?

Q. Yes.

A. Somebody sent me that clip
and I looked at it.

16:03:39 Q. As far as other R&H
employees, are you aware of other
employees using YouTube at work?

A. Well, we know Bert uses
Google Alert, which I assume sends him
to YouTube sometimes.

16:03:54 Q. Why do you assume that?

A. I just assume it. I don't
know it for a fact.

16:04:03 Q. Other than Mr. Fink, are you
aware of other employees using YouTube
at work?

A. Other than Mr. Fink, I am
not.

16:04:11 Q. When you have used YouTube,
have you taken any steps to make sure
that a particular clip you viewed is

VICTORIA TRAUBE

not infringing?

A. Of a cat?

Q. Of any clip that you viewed.

16:04:19 A. No, I have not.

MR. FRANTZ: Let's do the
next exhibit.

(Whereupon, the
aforementioned E-mail, RH00056543,
16:04:22 was marked as Defendant's Exhibit
9 for identification as of this
date by the Reporter.)

A. Yes.

Q. Do you recall this E-mail?

16:04:52 A. I recall the situation. I
don't recall the E-mail.

Q. And can you describe the
situation?

A. Yes. It came to my
16:04:59 attention that our IT people had chosen
to block access to YouTube from the
office. They do that with various
websites that they think people are
spending time on. For example,
16:05:14 Facebook is blocked.

VICTORIA TRAUBE

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2 When I found out that they
3 blocked YouTube, I was furious that
4 they would have done it without asking
5 16:05:23 me since we were in litigation at the
6 time, and I required them to unblock it
7 immediately.

8 Q. The purpose for the IT folks
9 blocking the website was your
10 16:05:36 understanding that employees were
11 spending too much time on YouTube?

12 A. That's what they told me.

13 Q. Do you know what sort of
14 videos the employees were viewing on
15 16:05:44 YouTube?

16 A. I do not know.

17 Q. And why were you furious
18 that YouTube had been blocked at work?

19 A. Because I just couldn't
20 16:05:53 believe that they would do something in
21 connection with -- related to an
22 ongoing litigation without talking to
23 the general counsel of the company.

24 Q. And did you subsequently
25 16:06:06 disable, or I should say re-enable,

VICTORIA TRAUBE

access to YouTube at work?

A. They did. The IT people
did, yes.

16:06:12 Q. You told them to do that?

A. I did.

Q. Why did you tell them to do
that?

A. Because I didn't see any
16:06:19 reason to block it. It seemed
gratuitous.

Q. What about the purported
reason that employees were wasting too
much time on YouTube?

16:06:35 A. It is not really a decision
of the IT department.

Q. Do you know what Bert Fink
was doing on YouTube at work?

A. I don't know.

16:06:57 Q. Other than Mr. Fink, is
there anyone else that would know that?

A. Well, I don't think so.
Bill Gaden might know. It was reported
to him at the time.

16:07:17 Q. Are you aware of any R&H

Schapiro Exhibit 79

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE FOOTBALL ASSOCIATION PREMIER
LEAGUE LIMITED, BOURNE CO., et al.,
on behalf of themselves and all
others similarly situated,

Plaintiffs,

-against-

Case No.
07-CV-3582

YOUTUBE, INC., YOUTUBE, LLC, and
GOOGLE, INC.,

Defendants.

CONTINUED VIDEOTAPED DEPOSITION OF
VICTORIA G. TRAUBE
NEW YORK, NEW YORK
Friday, December 18, 2009

JOB NO: 18329
Reported by:
AYLETTE GONZALEZ

December 18, 2009
Time: 10:12 a.m.

CONTINUED VIDEOTAPED DEPOSITION
OF VICTORIA G. TRAUBE, held at the
offices of Mayer Brown, LLP., 1675
Broadway, New York, New York 10019,
pursuant to notice, before Aylette
Gonzalez, Certified LiveNote Reporter
and Notary Public of the State of New
York.

A P P E A R A N C E S:

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A P P E A R A N C E S: (Continued)

ALSO PRESENT:

TOM KRAUSE, Videographer

KATHRYN E. WAGNER,

National Music

Publishers' Association

1 VICTORIA G. TRAUBE

2 managed to read it.

3 Q. Oh, great. So earlier,

4 Ms. Traube, you testified about a clip that

5 had been uploaded to YouTube for 10:17:24

6 "Do-Re-Mi", that was uploaded with

7 authorization; is this the clip that you

8 were referring to?

9 MR. STELLINGS: Object to the

10 form of the question. 10:17:35

11 A. It appears to be the clip I

12 referred to. It's not -- it was not

13 uploaded with authorization.

14 Q. When you say it was not

15 uploaded with authorization, is your 10:17:52

16 testimony that it was uploaded without

17 authorization?

18 A. It was.

19 Q. And if I could just direct your

20 attention again to the top right-hand box, 10:18:01

21 I'm not sure if it's a bit difficult to

22 read, but it appears that the username who

23 uploaded it is -- and I don't know how to

24 pronounce this, it says

25 S-A-I-H-T-T-A-M-1988; do you see where I'm 10:18:15

1 VICTORIA G. TRAUBE

2 looking?

3 A. I see where you're looking.

4 Q. Do you know who the user that I
5 just spelled out the name, do you know who
6 that user is?

10:18:26

7 A. No.

8 Q. Do you know who actually
9 uploaded the clip?

10 A. No. This clip, no, I do not
11 know who uploaded this specific clip you're
12 showing me in this specific instance.

10:18:32

13 Q. As far as a certain clip of the
14 same performance, it doesn't necessarily
15 need to be this very clip, realizing of
16 course that the same clip could be uploaded
17 more than once, are you aware of any party
18 that uploaded a clip of this performance?

10:18:55

19 A. It was my understanding that
20 the clip was uploaded by the television
21 station who created the clip as publicity
22 for the Maria Star Search program.

10:19:10

23 Q. Did there come a time when this
24 clip that you just referred to ultimately
25 became licensed?

10:19:42

1 VICTORIA G. TRAUBE

2 A. Yes.

3 Q. Who issued that license?

4 A. It was licensed by EMI Belgium

5 and the actual person is Guy Vanderhoven.

10:19:57

6 Q. What, if anything, is the
7 relationship between EMI Belgium and R&H?

8 A. They're our subpublisher.

9 Q. Was R&H aware that EMI licensed

10 the clip at the time the license was

10:20:21

11 issued?

12 A. Yes.

13 Q. Did the license issue before or

14 after or at the same time as the clip was

15 uploaded?

10:20:36

16 A. After.

17 Q. Do you have a sense of how long

18 after the clip was uploaded, the license

19 was issued?

20 A. You know, it took some period

10:20:45

21 of time, months perhaps.

22 Q. At the time the license was

23 issued by EMI Belgium, was R&H aware of it

24 immediately?

25 MR. STELLINGS: Object to the

10:21:11

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VICTORIA G. TRAUBE

form of the question.

A. What's it in that sentence?

Q. It is the fact that the license
has been issued; was R&H aware that the
license had been issued at the time that
the license was issued?

10:21:18

A. Yes, but I need to take a break
to discuss a privilege question.

Q. Okay.

10:21:40

THE VIDEOGRAPHER: The time is
10:21 a.m. and we're going off the
record.

(Whereupon, an off-the-record
discussion was held.)

10:25:47

THE VIDEOGRAPHER: The time is
10:25 a.m. We're back on the record.

Q. I'm not sure if there was a
question pending, but you said you wanted
to consult with Counsel. Is there
something you wanted to add to the last
answer?

10:25:59

A. No, I believe I answered the
last question by saying yes.

Q. Now, if I could read back some

10:26:11

VICTORIA G. TRAUBE

of your earlier testimony from the first
part of the deposition. I'm referring to
page 50, starting at line 24, are you there
yet?

10:26:36

A. Yeah.

Q. So question: Has R&H ever had
difficulty in determining whether
particular use of license on the internet.
Mr. Stellings objects to the form of the
question. You can answer.

10:26:43

Answer: Not really a
difficulty. It is just -- let me give an
example. A clip from the television show
in Holland had turned up on the internet.
We had to determine -- first, we had to
determine if the television show was
licensed. That meant we had to go to the
foreign subpublisher and to the stage
producer, too and to our foreign subagent.
And ultimately, it just took a few steps to
discover that the use was in fact properly
licensed for television. So it's not
just -- it just sometimes takes a little
bit of work to determine whether a subagent

10:26:53

10:27:01

10:27:12

1 VICTORIA G. TRAUBE
2 has issued a license, that's what I meant
3 by difficulty.

4 Is this testimony in reference
5 to the same clip of a performance in the 10:27:20
6 train station in Belgium?

7 A. Yeah, yes.

8 Q. In the testimony, you seem to
9 suggest, do you not, that R&H was not
10 immediately aware of the license having 10:27:35
11 been issued; is that correct?

12 MR. STELLINGS: Object to the
13 form of the question; misstates the
14 witness' testimony. You can answer.

15 A. No, here's what happened. We 10:27:42
16 became aware that the clip was up on
17 YouTube. It was an unlicensed use. What
18 was licensed was the television program,
19 the name of which I cannot pronounce in
20 Dutch, but it was the Star Search program 10:28:09
21 for Maria, which had been licensed
22 previously through the London producers of
23 "The Sound of Music" and we had granted a
24 stage license for a production of "The
25 Sound of Music" and the television program 10:28:32

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VICTORIA G. TRAUBE

was intended to choose the Maria for the
stage production.

We -- when we became aware of
the clip, what we had to find out was 10:28:44
whether it was related to the television
show. The television show was licensed.
The format was licensed by the really
useful group in London that created the
format for the Star Search program and the 10:29:13
right to use music from the show on the
Dutch television program is covered by what
is called a blanket license.

The blanket license belongs to
the Dutch television station. That was 10:29:28
what I had to figure out. It didn't -- it
took a little doing, not that much doing.
But what became clear is that the use of
that clip had not been licensed for
appearance on YouTube. 10:29:49

Q. Did there come a time that it
was licensed to be on YouTube?

A. Yes.

Q. That license was issued by EMI?

A. Yes. 10:30:01

1 VICTORIA G. TRAUBE

2 Q. And we've requested a copy of
3 the license, but we haven't received it.
4 Do you know if such a copy exist?

5 A. I do not have a copy of the 10:30:10
6 license. It is possible that all there was
7 was an invoice as opposed to a formal
8 license.

9 Q. Do you know the terms under
10 which it was licensed? 10:30:27

11 A. Yes.

12 Q. What were the terms?

13 A. Five hundred euros.

14 Q. Were there any restrictions on
15 the ability to use on YouTube? 10:30:36

16 A. The right granted was the right
17 to show what I will call the Antwerp video
18 on YouTube.

19 Q. Did EMI consult with R&H in
20 issuing this license? 10:30:54

21 A. Yes.

22 Q. Do you know what the date of
23 the license was, approximately?

24 MR. STELLINGS: If you know,
25 you can answer. I don't want you to 10:31:08

1 VICTORIA G. TRAUBE

2 document production, we'll produce
3 additional documents, but as of now,
4 without that agreement for the
5 bilateral document production
6 supplementation, we will not be
7 unilaterally supplementing our
8 document production.

10:40:51

9 MR. FRANTZ: I obviously
10 disagree with that. It clearly calls
11 for several document requests and
12 clear rather than in the scope and
13 rather than go on and on on the
14 record, we agree to talk about that
15 after the deposition.

10:41:01

10:41:11

16 MR. STELLINGS: Sure.

17 TO BE FURNISHED: _____

18 _____

19 Q. In this instance you just
20 referred to, why was it that you decided to
21 authorize this use on YouTube?

10:41:14

22 A. Because the theater really
23 wanted to be able to leave the clips up and
24 made a special plea.

25 Q. Did they express that they

10:41:43

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VICTORIA G. TRAUBE

really wanted to leave these clips up to
you?

A. Not directly to me, through one
of my colleagues.

10:41:52

Q. Which colleague was that?

A. I think it may have been Bruce
Pammerhacker, our music director that was
down there for music rehearsals.

Q. Was anyone else involved in the
discussions regarding this requested
license for YouTube?

10:42:11

A. No.

Q. Did -- I can't say the last
name, so I'll say Bruce. Did Bruce express
a view to you as to whether this license,
this view should be authorized?

10:42:26

A. Not -- no, he didn't really
express a view. He simply conveyed to me a
message that the theater wanted the ability
to leave these clips up.

10:42:40

Q. Other than the instance we've
just been discussing, can you recall any
other instances in which R&H has authorized
it's contents to appear on YouTube?

10:42:58

1 VICTORIA G. TRAUBE

2 A. Yes.

3 Q. Can you describe that?

4 A. Fairly recently, a theater in

5 Philadelphia posted clips from it's

10:43:09

6 production of "Light in the Piazza" on

7 YouTube, again, not permitted by the

8 license.

9 The licensing agent at R&H

10 instructed the theater on the telephone

10:43:31

11 that they didn't have the right to do this

12 and that the clips needed to come down, but

13 the theater, as I understand it, and this

14 is just reported to me by Michelle who is

15 the licensing agent, the theater wanted to

10:43:50

16 leave the clips up and they -- and once

17 again, when a customer wants something, I

18 determine that it was all right to allow --

19 to actually license the usage.

20 Q. Did R&H issue a written license

10:44:10

21 in this instance?

22 A. Yes.

23 MR. FRANTZ: We request a copy

24 of that license. I know what you're

25 going to say.

10:44:21

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VICTORIA G. TRAUBE

MR. STELLINGS: I'm not going
to say anything.
TO BE FURNISHED: _____

10:44:25

Q. Other than the two instances
we've just discussed, were there any other
instances in which R&H has authorized its
contents to appear on YouTube?

A. Well, we previously discussed
in my last deposition the Young Vic,
"Annie, Get Your Gun" use.

10:44:34

Q. Right. Just to be clear, I'm
excluding the five that we've discussed.

A. Okay. There is a current tour,
a first class tour of "South Pacific". It
was brought to my attention that the
promoter, that is to say the theater owner
in San Francisco where the show opened, had
links from its own page to YouTube where
they were showing clips from the show.

10:44:47

10:45:19

When I looked at the license
that we had issued, I discovered that the
license did not include what I considered
to be a customary clause for these kinds of

10:45:46

VICTORIA G. TRAUBE

first class licenses authorizing
promotional use of elements from the show
and radio television and the internet.

Accordingly, I am in the process of
amending the "South Pacific" license
agreement to permit use of clips from the
show for promotional purposes on radio,
television and the internet.

Q. And the internet would include
YouTube, correct?

A. It would.

Q. Do you have any concerns about
this or any of the other clips we've just
been discussing being on YouTube?

MR. STELLINGS: Object to the
form of the question. You can
answer.

A. Do I have any concerns, no.

MR. FRANTZ: Let's do the next
exhibit, please. This is an exhibit
that was previously marked as Exhibit
8, so we don't need to mark it, I
don't think.

Q. You have in front of you,

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VICTORIA G. TRAUBE

Ms. Traube, a document previously marked as
Exhibit 8; do you recall this document?

A. I do.

Q. SP in this e-mail chain refers
to "South Pacific"; is that correct?

10:47:32

A. That's correct.

Q. You see in this e-mail chain,
Mr. Gaden is suggesting that "South
Pacific", that he might want to promote
"South Pacific" on YouTube; is that
correct?

10:47:51

A. That is correct.

Q. Did R&H, in fact, promote
"South Pacific" on YouTube in this
instance?

10:48:02

A. No.

Q. Did R&H promote it on any other
websites in connection with this e-mail?

A. Not in connection with this
e-mail.

10:48:08

Q. To clarify, I'm saying in
connection with this e-mail just to
distinguish from the previous testimony,
where you said that you're currently in the

10:48:19

VICTORIA G. TRAUBE

A F T E R N O O N S E S S I O N

(Time noted: 12:50 p.m.)

V I C T O R I A G . T R A U B E ,

resumed and testified as follows:

EXAMINATION BY (Cont'd.)

MR. FRANTZ:

THE VIDEOGRAPHER: The time is

12:51:15

12:50 p.m. and this is tape number

three of the videotaped deposition of

Victoria Traube.

Q. Welcome back, Ms. Traube.

A. Thank you.

12:51:56

Q. I wanted to actually read back
some testimony not from today, but from
October 8th. I'm referring to page 139,
line ten, starting there. If you're ready,
just look up?

12:52:19

A. How far am I supposed to read?

Q. I'm just going to do to the top
of the next page.

A. Okay, I'll just listen to you
read.

12:52:32

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VICTORIA G. TRAUBE

Q. So, the testimony was,

Question: Besides that, are there other

third-party websites that sometimes R&H

permits works to be posed on. Answer: I'm

12:52:39

not sure. Let me give you a specific.

When synchronization rights are granted for

the use of a musical composition in a

commercial, the advertising agency or the

sponsor acquiring that's acquiring the

12:52:51

rights may want the right to post the

commercial on the internet as well as

showing it on the television and typically,

we have to agree. Well, we don't have to

agree, but we choose to agree to it and I

12:53:02

just plain don't know whether there are

ever third-party websites involved.

I was reading back that

testimony, because I was hoping it might

refresh your recollection as to sync

12:53:15

licenses for use in commercials and having

heard that earlier testimony, can you

recall any sync licenses for commercials

which R&H works were authorized to appear

on YouTube?

12:53:28

1 VICTORIA G. TRAUBE

2 A. There was a U.K. promotional
3 piece for Turner Classic Television and
4 that promotional piece, it was an
5 advertisement/promotional piece, but the
6 purpose was to promote the Turner service
7 and that it was my understanding that that
8 promotional piece was to appear on websites
9 including YouTube.

12:54:09

10 Q. And when was that; when did
11 that event occur?

12:54:26

12 A. I'm pretty sure that it was
13 recently, over the summer of 2009.

14 Q. In that Turner promotional
15 piece that appeared on YouTube, were there
16 any R&H musical compositions included in
17 the piece?

12:54:53

18 A. Yes.

19 Q. Do you know which ones?

20 A. I think -- I just can't
21 remember exactly. It was one song from
22 "The Sound of Music".

12:55:05

23 Q. Do you know whether it was
24 "Do-Re-Mi"?

25 A. I want to say it was "My

12:55:19

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VICTORIA G. TRAUBE

Favorite Thing", but I could be wrong.

Q. Did you -- do you recall
issuing the license in this instance that
we're talking about right now?

12:55:41

A. I do not know whether the
license was ever, in fact, issued.

Q. Do you consider this particular
use to be authorized?

A. I don't know whether the use
actually took place. What I was telling
you about -- you know what, well, okay.
It's not -- I was consulted in my capacity
as Counsel about the possibility of this
particular promotional use, that is where
my knowledge of it comes from.

12:55:57

12:56:20

Q. Did R&H ultimately authorize
the promotional use?

A. I don't know.

Q. You don't know whether R&H
authorized it?

12:56:39

A. I don't know.

Q. Did you authorize it
personally?

A. Are we getting into privilege?

12:56:46

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VICTORIA G. TRAUBE

MR. STELLINGS: You can testify
whether you authorized it or not.

A. I did not object to it.

Q. Who were you discussing this 12:57:02
with?

A. It would have been Nancy DeToro
who was doing sync licensing.

Q. Was the licensee or the party
that would have been the licensee, was that 12:57:21
party Turner Classic?

A. I don't know whether it was
Turner Classic or an advertising agency.

Q. Why is it that you did not
object to this particular use or 12:57:32
contemplated use?

MR. STELLINGS: You should
answer only to the extent that your
answer would not implicate work
product. 12:57:41

A. I can't answer without
implicating work product.

Q. The answer is simply because
the licensee was interested in it and R&H
seeks to please its licensee? 12:57:54

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VICTORIA G. TRAUBE

exhibit, please.

(Defendants' Exhibit 29,
agreement, marked for identification,
as of this date.)

13:20:10

(Whereupon, at this time, a
short break was taken.)

THE VIDEOGRAPHER: The time is
1:19 p.m. and we're back on the
record.

13:20:15

Q. I believe you have Exhibit 28
in front of you?

A. 29.

Q. This is a subpublisher
agreement between Williamson Music and Cafe
Concerto, correct?

13:20:27

A. Um-hum.

Q. Williamson Music is affiliated
with R&H; correct?

A. They're the subpublisher for
Italy.

13:20:36

Q. Williamson Music is the
subpublisher?

A. No, Cafe Concerto is.

Q. My question is Williamson

13:20:44

1 VICTORIA G. TRAUBE

2 Music, what is the relationship between
3 Williamson Music and R&H?

4 A. Williamson Music is a division
5 of the Rodgers and Hammerstein
6 Organization, it's a nominee.

13:20:53

7 Q. If you look at the agreement,
8 looking at the Grant of Right, clause 1B,
9 does that include internet use?

10 A. Well, you can read it as well
11 as I can. It includes reproductions by
12 downloads through electronic media such as
13 internet, but only to the extent authorized
14 by SIAE, which is the Italian licensing
15 society.

13:21:26

13:21:47

16 Q. Do you know what it means only
17 to the extent authorized by SIAE?

18 A. I do not.

19 Q. Also looking at paragraph 1C,
20 again, does that indicate internet
21 authorization to you?

13:22:01

22 A. Only to the extent authorized
23 by the society and I do not know what that
24 extent is.

25 Q. Earlier you testified that

13:22:15

1 VICTORIA G. TRAUBE

2 subpublishers do not have the right to
3 authorize internet use, does anything in
4 this agreement make you question your
5 earlier testimony?

13:22:35

6 A. Obviously, but I don't. Number
7 one, I don't think I've actually ever read
8 the Cafe Concerto agreement before and
9 number two, I don't know what to the extent
10 authorized by SIAE means and I don't want
11 to speculate. I could find out.

13:23:01

12 Q. Earlier you testified that you
13 were not certain whether your Counsel had
14 checked with all of the subpublishers for
15 the works in suit before asserting these
16 clips in this action; is that correct?

13:23:17

17 MR. STELLINGS: Object to the
18 form of the question. You can
19 answer.

20 A. I was not -- I testified that I
21 was not certain that my Counsel had checked
22 with our subpublishers; I do not believe
23 our Counsel checked with our subpublishers.

13:23:25

24 Q. Did R&H itself or anyone else
25 acting on behalf of R&H consult with all of

13:23:42

1 VICTORIA G. TRAUBE

2 A. I don't know.

3 Q. What about the clip we
4 discussed earlier at length, the train
5 station in Belgium, would that be an
6 example of a clip that included R&H
7 contents, but R&H could not immediately
8 determine whether it was authorized or not?

13:37:56

9 MR. STELLINGS: Object to the
10 form. You can answer.

13:38:08

11 A. It did take me a couple of
12 e-mails and a couple of phone calls to
13 determine that that clip was not
14 authorized.

15 Q. Who did you send those e-mails
16 to?

13:38:30

17 A. Probably --

18 MR. STELLINGS: Don't
19 speculate, please.

20 A. Okay. I honestly don't
21 remember with any specificity.

13:39:01

22 Q. Have there been any instances
23 where a DMCA Takedown Notice sent on behalf
24 of R&H has been challenged or otherwise the
25 subject of dispute?

13:39:30

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VICTORIA G. TRAUBE

A. No.

MR. FRANTZ: Why don't we take
a short break. I think I'm almost
done.

13:39:43

THE VIDEOGRAPHER: The time is
1:39 p.m. We're going off the
record.

(Whereupon, at this time, a
short break was taken.)

14:04:39

THE VIDEOGRAPHER: The time is
2:04 p.m. and this is tape number
four of the videotaped deposition of
Victoria Traube.

Q. I just wanted to do some
cleanup as to the authorized uses on
YouTube that I think I may have gotten it
wrong. Let me try to clarify it for the
record.

14:04:57

On October 8th, we talked about
three authorized uses on YouTube, "White
Christmas", the musical, Young Vic's
production of "Annie, Get Your Gun" and
"Do-Re-Mi" and the Belgium train station;
is that correct?

14:05:08

14:05:22

1 VICTORIA G. TRAUBE

2 A. Yes.

3 Q. Today, I believe, we talked

4 about an additional three, if not four.

5 Let me try to run through them, make sure I

14:05:28

6 have them right.

7 First new one was the June 2009

8 Lyric Stage Production in Texas; is that

9 correct?

10 A. Correct.

14:05:36

11 Q. Second new one was the

12 production of "Light in the Piazza" in

13 Philadelphia; is that correct?

14 A. Yes.

15 Q. Third new one was "The Tour of

14:05:44

16 South Pacific" in San Francisco that you

17 said was currently -- the paperwork is

18 currently being revised; is that correct?

19 A. Correct.

20 Q. A fourth one that you

14:05:53

21 referenced, which was Turner Classic, but I

22 think the testimony was that you weren't

23 certain if a license was ultimately issued;

24 is that correct?

25 A. Yes.

14:06:02

VICTORIA G. TRAUBE

Q. Starting with the 2009 Lyric Stage Production in Texas, do you know what compositions were included in the particular use on YouTube?

14:06:12

A. No, they were from the King and I.

Q. Do you know if any of the compositions are works in suit?

A. I don't know.

14:06:31

Q. Do you know if any of them were "Getting to Know You"?

A. I don't know.

Q. When did R&H first become aware of this particular use on YouTube?

14:06:57

A. The Lyric Stages?

Q. Correct.

A. It was June of 2009.

Q. Approximately, when did R&H issue the license?

14:07:09

A. In July of 2009.

Q. Does R&H ever inform YouTube of this license?

A. No.

MR. FRANTZ: To the extent we

14:07:27

1 VICTORIA G. TRAUBE

2 haven't already, we request
3 production of all documents relating
4 to this particular subject.

5 TO BE FURNISHED: _____

14:07:32

6 _____
7 Q. The second, I'll call new use
8 for today, was the production of "Light in
9 the Piazza" in Philadelphia and I believe I
10 asked you if you could recall the
11 composition and I believe your testimony
12 was that you could not?

14:07:42

13 A. I can't, but I can tell you
14 they're not the works in suit.

15 Q. Do you recall when R&H first
16 became aware of this use on YouTube?

14:07:52

17 A. Recently, November possibly.

18 Q. November of 2009?

19 A. Yes.

20 Q. Has a license been issued
21 already?

14:08:11

22 A. It has.

23 Q. That license was issued by R&H
24 itself; is that right?

25 A. R&H Theatricals, the

14:08:27

1 VICTORIA G. TRAUBE

2 theatricals division.

3 MR. FRANTZ: We also call for

4 production for all documents relating

5 to this appearance of an R&H

14:08:36

6 composition on YouTube.

7 TO BE FURNISHED: _____

8 _____

9 Q. The third new use from today

10 was "The Tour of South Pacific" in San

14:08:45

11 Francisco, can you tell me when you became

12 aware of that existence of those clips on

13 YouTube?

14 A. Sometime in the summer.

15 Q. You're in the process of

14:09:04

16 issuing a license, but it hasn't happened

17 yet; is that correct?

18 A. It's been drafted and sent, but
19 not signed.

20 Q. Do you know which compositions
21 appear in the clips on YouTube?

14:09:13

22 A. I do not know.

23 Q. The compositions would be
24 compositions from the --

25 A. From the musical "South

14:09:24

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VICTORIA G. TRAUBE

Pacific".

Q. Do you know if any of those
compositions are works in suit?

A. I don't know.

14:09:30

MR. FRANTZ: We'll call for
production of all documents relating
to this use on YouTube.

TO BE FURNISHED: _____

14:09:41

Q. The last new use that we
learned about today is the Turner Classic
use and again the same question, do you
recall which composition or compositions
from R&H are involved?

14:09:55

A. I'm pretty sure it was "My
Favorite Things".

Q. Do you know whether there are
other compositions involved?

A. I believe there was only one.

14:10:12

Q. When did R&H become aware of
the use?

A. Sometime this summer -- well,
no, I'm sorry, I take that back. This was
not a pre-existing use. This was a request

14:10:30

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VICTORIA G. TRAUBE

for a license for use that had not yet
occurred.

Q. Do you know whether the clips
are currently on YouTube?

14:10:44

A. I do not -- I don't know. I
also don't know whether the license was in
fact issued.

MR. FRANTZ: We'll also request
production of all documents relating
to this particular use on YouTube or
contemplated use on YouTube.

14:10:54

TO BE FURNISHED: _____

Q. With respect to all seven of
the instances of uses on YouTube or at
least contemplated uses on YouTube, in any
of those cases, did R&H inform YouTube of
the licenses?

14:11:00

A. No.

14:11:19

MR. STELLINGS: Objection,
asked and answered.

Q. I think we're going to talk
about the purchase agreement briefly. The
purchase agreement, I believe, was

14:11:33

1 VICTORIA G. TRAUBE

2 previously marked as Exhibit 19. You have
3 it in front of you.

4 [REDACTED]
5 [REDACTED] 14:12:21
6 [REDACTED]

7 A. Yes, I do.

8 Q. Was that, in fact, the purchase
9 price for this transaction?

10 A. By contract, yes. 14:12:30

11 Q. Did this purchase price account
12 at all for the valuation of the R&H
13 copyrights?

14 MR. STELLINGS: Objection,
15 vague. You can answer. 14:12:47

16 A. Sure.

17 Q. How was, if at all, valuation
18 performed on the R&H copyrights?

19 MR. STELLINGS: Objection. You
20 can answer. 14:13:09

21 A. The custom in the industry is
22 to use a multiple of average earnings.

23 Q. Is that the process by which
24 the works were valued in this case?

25 A. That's my understanding. 14:13:30

Schapiro Exhibit 80

Sound of Music | Central Station Antwerp (Belgium)



13,467,721 views

Favorite Share Playlists Flag

MySpace Facebook Twitter (more share options)

Download This Song: AmazonMP3 iTunes

Statistics & Data

Video Responses (11)



View All - Play All

Text Comments (10,231) Options

20Dlemonde (1 hour ago)

If you think there were idiots that spontaneously joined in, I think you are the idiot here.

thank you, have a nice day.

LeDauf (3 hours ago)

Where capitalism rules, so does advertising. Sorry about that. And I suspect that the participants in this particular 'flash mob' were probably quite enjoying themselves, along with many of the people watching. Go to the YouTube channel 'Improv Everywhere' and you will see flash mobs intended for pure entertainment. No rebellion. No marketing. Just fun. :)

Rokkoko (7 hours ago)

I am getting increasingly tired of these pseudo flash mobs organised by marketing 'creatives'. Flash mobs used to be an act of rebellion. Nowadays the so called 'creative' agencies killed it's spirit and turned it into a marketing tool. I am just wondering about 2 things:
1) How is this supposed to encourage me to watch a TV show?
2) Do the idiots who join in spontaneously realise they are making fools of themselves for free, whereas everyone else is getting paid for it?

ooldesign (9 hours ago)

what exactly were they marketing? I have you thought about performance art or performance as an act of rebellion?

I understand agencies regularly adopt or steal ideas born from the underclasses/ground i.e. Graffiti = Vodafone I mean you are probably wearing high top nike air Jordans from the late 80's but how they're cool again. I wonder why?

ooldesign (6 hours ago)

Comment removed by author

catalaa (8 hours ago)

Coreografia meravellosa, en un lloc públic i amb una cançó inolvidable.

99point9 (12 hours ago)

Hahaha this is so flippin awesome!

jaydes711 (12 hours ago)

gawd, it made me tear up, but it was just what I needed in these times. I would have wanted to live in this completely different world were everyone just broke out in song from time to time

elebit (14 hours ago)

Esta demasiado espectacular realmente estoy sorprendida estoy sin palabras demasiado bello...

livra6387 (17 hours ago)

aahhahahhahaha this is wonderfull! I watch it all the time and I laugh everytime! wouldn't it be nice if we could all break out into song?? :)

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salhtam1988
March 23, 2009
(less info)

More than 200 dancers were performing their version of "Do Re Mi", in the Central Station of Antwerp, with just 2 rehearsals they created this amazing stunt! These 4 fantastic minutes started the 23 of march 2009, 08:00 AM. It is a promotion stunt for a Belgian television program, where they are looking for someone to play the leading role, in the musical of "The Sound of Music".

Category: Entertainment
Tags: sound of music antwerpen central belgium

URL: <http://www.youtube.com/watch?v=TEYAUd...>

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More From: salhtam1988

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Type/Length of Use: Background/Vocal; 2:09 in duration

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Nashville, TN 37203

and

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Universal Pictures, a div. of Universal City Studios, LLLP
100 Universal City Plaza
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